

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Doctor's Associates Inc.

Plaintiff,

Civil Action No. 09-cv-3148-JMR-AJB

v.

Subway.SY LLC and Hani Kotifani

Defendants

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**RULE 26(f) REPORT**

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**1. Identification of the parties and their attorneys**

**a. Name, address and occupation or business of each party, together with the name, address and telephone number of the attorneys who represent each party:**

1. Doctor's Associates, Inc., 325 Bic Drive, Milford Connecticut.

Peter Nikolai, Nikolai & Mersereau, P.A., 900 Second Avenue South, #820, Minneapolis, MN, 55402 Telephone: (612)339-7461

2. Subway.SY LLC, and Hani Kotifani 10473 Purdey Rd., Eden Prairie, Minnesota. Defendants are pro se.

**b. Name of insurance carriers that may be liable for the defense or payment of any damage award: N/A.**

**2. Description of the case**

**a. A concise statement of the jurisdictional basis of the case, giving statutory citation and a brief narrative description:** The Court has jurisdiction over the matter pursuant to Title 15 of the United States Code, and 28 U.S.C. § 1338. Further, the Court has

jurisdiction over DAI's related state claims pursuant to 28 U.S.C. § 1367(a). Venue is proper pursuant to 28 U.S.C. § 1391(c).

- b. **A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses:** Plaintiff Doctor's Associates Inc. (DAI) owns several federal trademark registrations for the mark SUBWAY and SUBWAY EAT FRESH in connection with a chain of fast food sandwich restaurants. Furthermore, DAI owns common law rights in the SUBWAY and SUBWAY EAT FRESH marks (referred to collectively as "The SUBWAY® Marks"). Defendants own and operate a Minnesota Limited Liability Company which operates under the name SUBWAY.SY EAT HEALTHY. Defendants have registered its SUBWAY.SY EAT HEALTHY mark with the Secretary of State for the State of Minnesota. Furthermore, Defendants own and operate a website at the domain name subway-sy.com.

Plaintiff raises several counts in its Complaint including: (1) Trademark Infringement under Section 32 of the Lanham Act; (2) Trademark Infringement under Section 43(a) of the Lanham Act; (3) Trademark Dilution Under 15 U.S.C. 1125(c) of the Lanham Act; (4) Violation of the Anti-Cybersquatting Consumer Protection Act Under 15 U.S.C. 1125(d)(1)(A); (5) Cancellation of Minnesota Trademark Registration under Minn. Stat. 333.25; (6) Violation of Minnesota Deceptive Trade Practices Act Under Minn. Stat. 325D.44; (7) Trademark Dilution and Injury to Business Reputation Under Minn. Stat. 333.285; (8) and Unfair Competition.

Defendant's Defense is that its conduct occurs mostly in Syria and therefore there is no likelihood of confusion between its services and DAI's services.

- c. **A summary itemization of the dollar amount of each element of the alleged damages.** N/A

3. Pleadings

- a. **A statement of whether the Complaint and all responsive pleadings have been filed, and whether the reporting party proposes to amend its pleadings:** The Complaint has been served on both Defendants, the Answer has been filed and at this time, Plaintiff has no intent to amend its pleadings.

- b. **The date the reporting party proposes by which all motions that seek to amend the pleadings or add parties will be filed:** March 22, 2010
- c. **Whether a jury trial is available under the law, and whether a jury trial has been timely demanded:** Plaintiff has timely demanded a jury trial.

**4. Discovery Plan**

- a. **Whether the parties wish to engage in any method of alternative dispute resolution following Rule 26(a)(1) disclosures but before formal discovery is commenced:** The parties wish to engage in an early settlement conference with the Court following Rule 26(a)(1) disclosures.
- b. **Whether discovery should be conducted in phases, or limited to or focused upon, particular issues:** Neither party believes that discovery should be conducted in phases, or limited to or focused upon particular issues.
- c. **The date by which each party shall disclose the identity of expert witnesses and their reports under Rule 26(a)(2)(A) and (B):** October 11, 2010.
- d. **Each party shall be permitted to serve 25 Interrogatories.**
- e. **Each party shall be permitted to take 5 depositions (excluding expert depositions).**
- f. **Each party shall be permitted to take 1 deposition per expert.**

**5. Close of Discovery and Non-Dispositive Motions**

All discovery shall be completed and all non-dispositive motions shall be filed and served by November 8, 2010.

**6. Dispositive Motions and Trial**

- a. All dispositive motions shall be served, filed and heard by the Court by January 13, 2011.
- b. The case will be ready for trial on February 21, 2011.
- c. Each party expects to call no more than 1 expert witness at trial.

- d. Estimated trial time (including jury selection and instructions, if applicable): **5 days**

Dated: February 1, 2010

s/Peter G. Nikolai

Peter G. Nikolai (#322052)

James T. Nikolai (#144101)

Laurie Young (#387975)

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**ATTORNEYS FOR PLAINTIFF  
DOCTOR'S ASSOCIATES INC.**

Dated: February 1, 2010

s/Hani Kotifani

Hani Kotifani

10473 Purdey Rd.

Eden Prairie, MN 55347

**DEFENDANT**